

1955 Present : Basnayake, A.C.J., and Pulle, J.

T. S. JINASENA, Appellant, and THE MINNERIYA AGRICULTURAL PRODUCE CO-OPERATIVE MARKETING SOCIETY, LTD., Respondent.

*S. C. 314—D. C. Colombo, 22,914*

*Interest—Mutual agreement necessary.*

Plaintiff sued defendant for the recovery of a certain sum for services rendered to the defendant. He also claimed interest at 12 per cent. per annum on the strength of the following legend on his invoices : " Interest at 12 per cent. will be charged on all overdue accounts ".

*Held*, that interest was not recoverable in the absence of an agreement in that behalf. The intimation on the bill heads did not constitute an agreement to pay interest.

**A**PPPEAL from a judgment of the District Court, Colombo.

*H. W. Jayewardene, Q.C.*, with *Lyn Wirasekera* and *P. Ranasinghe*, for Plaintiff-Appellant.

*N. E. Weerasooria, Q.C.*, with *B. H. Aluwihare* and *B. S. C. Ratnatte*, for Defendant-Respondent.

November 7, 1955. BASNAYAKE, A.C.J.—

The plaintiff-appellant (hereinafter referred to as the appellant) sued the defendant-respondent, the Minneriya Agricultural Produce Co-operative Marketing Society Limited (hereinafter referred to as the respondent), for the recovery of a sum of Rs. 4,888/25 with interest thereon.

at the rate of 12 per cent. per annum from 1st October, 1949, claimed by him for services rendered to the respondent in his capacity as an engineer. The respondent claimed a sum of Rs. 36,112 in reconvention and continuing damages at the rate of Rs. 50 a day from 1st July, 1950, but did not deny the claim of the appellant for the sum of Rs. 4,888/25.

After trial the learned District Judge found that the respondent had suffered damages in three sums of Rs. 3,000, Rs. 316 and Rs. 6,000 respectively and awarded the respondent a sum of Rs. 9,316, less a sum of Rs. 484/50 awarded to the appellant on his claim.

The learned Judge held that he had no territorial jurisdiction to go into the appellant's claim in respect of his quotations numbered 4014 and 4118 dated 23rd July, 1948, (P4A) and 1st March, 1949, (P5C) respectively and for that reason did not allow the claims in respect of those two quotations.

The learned Judge's conclusion that he had no territorial jurisdiction to go into those claims was founded entirely on the view that the contracts in respect of those quotations were made at Hinkurakoda.

The originals of these documents which appear to have been used at the trial do not seem to have been filed of record and were not available to the learned Judge at the time he wrote the judgment. The absence of the conditions of the contract on the copies P4A & P5G which the learned Judge had before him forced him to this erroneous finding. The originals of both documents have since been produced before us and they contain the conditions of the contract printed on the reverse.

It is clear from the conditions that the contracts were concluded in Colombo and that the learned Judge had territorial jurisdiction to adjudicate on them. We therefore set aside the trial Judge's order disallowing the appellant's claim in respect of those quotations on the ground of lack of jurisdiction and allow him credit for the full amount of his claim of Rs. 4,888/25 which is admitted by the respondent. The appellant has also claimed interest at 12 per cent. per annum. This claim is based on the strength of the legend "Interest at 12 per cent. will be charged on all overdue accounts" on his invoices. Under our law interest is not recoverable in the absence of an express agreement in that behalf<sup>1</sup>. Intimation on the bill heads does not constitute an agreement to pay interest. We therefore disallow the claim for interest prior to the date of action. After the date of action the payment of interest is regulated by the Civil Procedure Code. The appellant is declared entitled to interest at 5 per cent. on the sum of Rs. 4,888/25 from date of action till the date of decree and further interest at the same rate on the aggregate sum adjudged from the date of decree to the date of payment.

In the result the respondent will get judgment in a sum of Rs. 9,316 less the sum of Rs. 4,888/25 plus legal interest payable thereon in terms of this judgment. The order for half costs in favour of the defendant is set aside. There will be no costs of appeal.

PULLE, J.—I agree.

*Judgment varied.*

<sup>1</sup> *Areppin Ahamat v. T. D. Martinez—Wendt's Reports 341.*  
*Annamaty Chetty v. Thornhill—3 C. L. W. 56, 36 N. L. R. 358.*